

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COLUMBIA RIVERKEEPERS,

Plaintiff,

v.

EGT, LLC et al.,

Defendants.

CASE NO. 3:20-cv-05981-LK

CONSENT DECREE

**I. STIPULATIONS**

WHEREAS, Plaintiff Columbia Riverkeeper (“Riverkeeper”) filed a complaint on October 2, 2020 against the Port of Longview (Dkt. No. 1) and an amended complaint on December 8, 2020 (Dkt. No. 8), alleging violations of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, relating to discharges of stormwater and other pollutants from the Port of Longview’s properties in Longview, Washington at 10 International Way, Longview, WA, including any contiguous parcels that are included in the area covered under NPDES permit no. WAR001242 (the “Facility”) and the EGT LLC facility, and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

WHEREAS, Riverkeeper and the Port of Longview (the “Parties”) agree that settlement of these matters is in the best interest of the Parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

WHEREAS, Riverkeeper and the Port of Longview (the “Port”) stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Riverkeeper’s claims or allegations set forth in its complaint and its sixty-day notice.

DATED this 15th day of August, 2022

MILLER NASH LLP

SMITH & LOWNEY, PLLC

By s/ Steven Hill

By s/ Marc Zemel

Steven Hill, WSBA #23694

Marc Zemel, WSBA #44325

Michael Fandel, WSBA #16281

*Attorneys for Plaintiff Columbia Riverkeeper*

*Attorneys for Defendant Port of Longview*

PORT OF LONGVIEW

COLUMBIA RIVERKEEPER

By [signature in original]

By [signature in original]

Dan Stahl

Lauren Goldberg

Chief Executive Officer

Executive Director

## II. ORDER AND DECREE

THIS MATTER came before the Court upon the Parties’ Joint Motion for Entry of Consent Decree, Dkt. No. 48, and the foregoing Stipulations of the Parties. The United States has notified the Court that it has reviewed the proposed consent decree in this action and does not object to its entry by this Court. Dkt. No. 49. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and subject matter of this action.
2. Each signatory for the Parties certifies for that party that he or she is authorized to enter into the agreement set forth herein and to legally bind the party or parties, their successors in interest, and assigns of the Parties.

1           3.       This Consent Decree applies to and binds the Parties and their successors and  
2 assigns.

3           4.       This Consent Decree and any injunctive relief ordered within applies to the  
4 operation, oversight, or both by the Port of Longview of the Facility at 10 International Way,  
5 Longview, WA, including any contiguous parcels that are included in the area covered under  
6 NPDES permit no. WAR001242 (the “Facility”).

7           5.       This Consent Decree is a full and complete settlement and release of all the claims  
8 in the complaint and the sixty-day notices and all other claims known or unknown existing as of  
9 the date of entry of the Consent Decree that could be asserted under the Clean Water Act, 33  
10 U.S.C. §§ 1251-1387, arising from operation of the Facility. This includes releasing any claims  
11 of liability, under the Clean Water Act (33 U.S.C. §§ 1251-1387), for the activities undertaken  
12 by the Port or third parties within the Facility and any activities at the EGT facility and related  
13 dock. Upon termination of this Consent Decree, these claims are released and dismissed with  
14 prejudice. The Port’s payment of attorney’s fees and litigation costs set forth in paragraph 9 of  
15 the Consent Decree will be in full and complete satisfaction of any claims Riverkeeper and  
16 Smith & Lowney have or may have, either legal or equitable, known or unknown, and of any  
17 kind or nature whatsoever, for fees, expenses, and costs incurred in the Litigation. Enforcement  
18 of this Consent Decree is Riverkeeper’s exclusive remedy for any violation of its terms. During  
19 the term of the Consent Decree, Riverkeeper will not support by financial assistance, personnel  
20 time, or otherwise, other lawsuits or potential lawsuits by Riverkeeper or its members or other  
21 groups or individuals that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,  
22 arising from operation of the Facility.

23           6.       This Consent Decree is a settlement of disputed facts and law. It is not an admission  
24 or adjudication regarding any allegations by Riverkeeper in this case or of any fact or conclusion

1 of law related to those allegations, nor evidence of any wrongdoing or misconduct on the part of  
2 the Port or its tenants, contractors, customers, or other third parties. The Port agrees to the terms  
3 and conditions identified below in paragraphs 7-9 in full and complete satisfaction of all the claims  
4 covered by this Consent Decree:

5 7. Injunctive Relief:

- 6 a. The Port will continue to comply with the Clean Water Act at the Facility and  
7 the terms and conditions of the Industrial Stormwater General Permit (“ISGP”)  
8 and any successor or modified permits.
- 9 b. For the life of the consent decree, the Port will, on a quarterly basis,  
10 electronically forward to Riverkeeper copies of all submissions and written  
11 communications to and/or from Ecology related to the Port’s ISGP coverage  
12 for the Facility.
- 13 c. Within sixty days, except as provided in subsection (2), after entry of this  
14 Consent Decree, the Port will revise its stormwater discharge sampling plan to  
15 add the following monitoring points and will immediately begin quarterly  
16 stormwater discharge monitoring at the following monitoring points: (1) a  
17 representative point from Berth 2 that discharges to the Columbia River; (2) a  
18 single downspout from the Berth 6 Transit Shed roof after installation of  
19 proposed treatment; and (3) a sampling point in the North Quadrant of the  
20 Facility. In addition, the Port certifies that Berth 1 is currently inactive. In the  
21 event Berth 1 becomes active or used for shipping, the Port will add Berth 1 to  
22 its ISGP sampling plan and take appropriate further steps as required by the  
23 ISGP.
- 24 d. The Port will analyze all stormwater discharge samples taken during the term

1 of this Consent Decree for Petroleum Hydrocarbons (Diesel Fraction), Fecal  
2 Coliform Bacteria, and E. coli and report all results to the Department of  
3 Ecology. In addition, within fourteen (14) days of entry of this Consent Decree,  
4 the Port will report to Ecology all Fecal Coliform and E. coli monitoring data  
5 that has not already been reported in the last five years.

6 e. The Port certifies that it has plugged the hole in the water-side containment curb  
7 at Berth 7, which Riverkeeper observed during a site inspection. The Port will  
8 inspect all containment areas at the Facility during the Port's monthly  
9 inspections and will promptly repair any failures in containment that it  
10 observes.

11 f. Within sixty days of entry of this Consent Decree, the Port will revise its  
12 Stormwater Pollution Prevention Plan (SWPPP) with assistance of a qualified  
13 consultant, and provide Riverkeeper with the opportunity to review and  
14 comment on the revised SWPPP as follows:

15 i. The SWPPP will identify all known galvanized roofs at the Facility.

16 ii. The SWPPP site maps will include (1) the location and extent of  
17 impervious surfaces, (2) the location of critical structural source control  
18 BMPs to make them more easily observable on the site map, (3) the  
19 location of all known galvanized roofs, and (4) identification of the  
20 municipal separate storm sewer system (MS4) in Port Way.

21 iii. The SWPPP will describe the standard flow of goods through the  
22 Facility covering each routinely handled commodity or category of  
23 goods where practicable and revise the inventory of materials to reflect  
24 routinely-handled commodities or categories of goods transported

1 through the Facility. “Routinely handled commodity” includes calcined  
2 coke, soda ash, scrap and shredded metal, and logs.

3 iv. The SWPPP will identify where within the Facility each best  
4 management practice (BMP) is implemented at the Facility, including  
5 each BMP listed in the current SWPPP’s Table 3.

6 v. The SWPPP will include the revisions to the sampling plan described  
7 above at paragraph 7.c. and the Port will provide additional detail to its  
8 analysis of “substantially identical” discharge points so that each factor  
9 listed under ISGP Condition S3.B.5.b is considered for the discharge  
10 points the Port contends do not require monitoring under the ISGP.

11 vi. The SWPPP will include details of the sweeping operations that occur  
12 at the Facility and their frequency. The Port will also add a sweeping  
13 map to the SWPPP.

14 vii. The SWPPP’s Spill Prevention and Emergency Cleanup Plan (SPECP)  
15 will be revised to include plans applicable to the bulk commodities  
16 routinely handled at the Facility (calcined coke, soda ash, scrap and  
17 shredded metal, and logs) including, where applicable, addressing how  
18 each commodity would be treated differently if spilled, or how a spill  
19 response would differ for different spilled commodities.

20 viii. Within one (1) week of revising the SWPPP with all these items, the  
21 Port will provide a draft revised SWPPP to Riverkeeper for review and  
22 comment. Within thirty (30) days of Riverkeeper’s receipt of the Port’s  
23 draft revised SWPPP, Riverkeeper will provide to the Port any  
24 comments to the draft SWPPP. Within thirty (30) days of the Port’s

1 receipt of Riverkeeper's comments, the Port will either incorporate  
2 Riverkeeper's comments into the SWPPP or provide a detailed, written  
3 response to Riverkeeper explaining why any comment was not  
4 incorporated into the SWPPP. The Port will provide a copy of its final  
5 revised SWPPP to the Department of Ecology and share this submission  
6 with Riverkeeper contemporaneously. Within fourteen (14) days of  
7 entry of the Consent Decree, the Port will provide \$3,000 to Riverkeeper  
8 to conduct this review and comment process with assistance of  
9 consultants and attorneys, with payment made consistent with the  
10 instructions provided in paragraph 9 of this Consent Decree.

11 g. Within sixty days of entry of this Consent Decree, the Port will prepare certain  
12 commodity-specific pollution control BMPs for commodity handling at the  
13 Facility specifying best practices to prevent spills to the Columbia River to the  
14 extent practicable. The Port will prepare such BMPs applicable to the following  
15 routinely-handled commodities: calcined coke, soda ash, scrap and shredded  
16 metal, and logs. The Port will include reference to these commodity-specific  
17 BMPs in its SWPPP.

18 h. Within the time frames noted below and sooner as practicable, the Port will  
19 make, or will cause its tenant to make, the following improvements related to  
20 Berth 5 with the assistance of a qualified consultant:

21 i. Within nine months of entry of the Consent Decree, replace or upgrade  
22 all skirting on all conveyors to the Berth 5 ship loading area with the  
23 goal of mitigating loss of commodities.

24 ii. Within nine months of entry of the Consent Decree, implement

1 additional preventative measures on the Berth 5 dust return line with the  
2 goal of mitigating fugitive emissions from the dust line.

3 iii. Within 30 days of entry of the Consent Decree, retain a full-time facility  
4 manager who will oversee operations for the Berth 5 facility. In the  
5 event the current manager's employment is terminated or they otherwise  
6 end their employment, the Port will take reasonable steps to replace  
7 them.

8 iv. Within 30 days of entry of the Consent Decree, implement a regular  
9 inspection practice of reviewing the commodity-handling equipment  
10 and operational protocols at Berth 5 with the goal of minimizing or  
11 eliminating, to the extent practicable, fugitive emissions from the  
12 facility.

13 v. Within ten months of Entry of the Consent Decree (weather permitting),  
14 increase the amount of paved area at Berth 5 to facilitate more effective  
15 sweeping.

16 vi. Within 60 days of entry of the Consent Decree, conduct weekly  
17 enhanced vacuum sweeping at Berth 5 for areas exposed to stormwater.  
18 Additionally, the Port will hand-sweep and/or hand vacuum such areas  
19 of the Berth 5 dock that are exposed to stormwater and inaccessible by  
20 a vacuum sweeper within one week of each vessel's departure. The Port  
21 may delay sweeping where necessary due to ongoing operations of the  
22 Berth, but when sweeping is delayed, the Port will take reasonable  
23 efforts to sweep as soon as practicable and safe.

24 vii. Within six months of entry of the Consent Decree, review all BMPs



implemented at Berth 5 and implement additional improvements, if appropriate, to prevent commodity releases from reaching the Columbia River and to mitigate stormwater runoff contamination.

viii. Within 30 days of completing the task, incorporate items (vi) and (vii) under paragraph H into the Facility's revised SWPPP.

i. The Port will display information regarding illicit discharges in the International Longshore and Warehouse Union (ILWU) breakroom and other locations at the Facility.

j. The Port agrees to not unreasonably withhold permissions to EGT LLC for requested modifications to existing facilities at the Berth 9 grain terminal to prevent or mitigate grain and grain dust discharges or stormwater contamination.

k. The Port will be subject to stipulated payment in lieu of penalty of \$2,500 (two thousand five hundred dollars) to the Rose Foundation for each reportable and unauthorized release of commodities directly to the Columbia River from the Facility during the term of this Consent Decree. The Port will notify Riverkeeper of any such incident within 72 hours of learning of the incident, with payment to be made within 30 days as directed in paragraph 8 of this Consent Decree. The Rose Foundation may only use these funds for projects that benefit water quality in the Columbia River basin, as described in Exhibit 1, Dkt. No. 48-1 at 18-20, to this Consent Decree.

8. Payment in Lieu of Penalty: Within fourteen (14) days of entry of this Consent Decree, the Port will pay \$650,000 (six hundred fifty thousand dollars) to the Rose Foundation for the sole use for projects that benefit water quality in the Columbia River basin, as described in

1 Exhibit 1 to this Consent Decree. The checks will be made to the order of The Rose Foundation  
2 and delivered by check made payable and mailed to: The Rose Foundation for Communities and  
3 the Environment, Attention: Tim Little, 201 4<sup>th</sup> Street, Suite 102, Oakland, CA 94707. Payment  
4 will include the following reference in a cover letter or on the check: "Consent Decree, Riverkeeper  
5 v. Port of Longview, W.D. Wash. No. 3:20-cv-05981-LK." Simultaneously, the Port will send a  
6 copy of the checks and cover letters, if any, to Columbia Riverkeeper and its counsel.

7 9. Within fourteen (14) days of entry of this Consent Decree by the Court, the Port  
8 will pay \$224,000 (TWO HUNDRED AND TWENTY-FOUR THOUSAND DOLLARS) to  
9 Riverkeeper to cover Riverkeeper's litigation fees, expenses, and costs (including reasonable  
10 attorneys and expert witness fees) by check payable and mailed to Smith & Lowney, PLLC, 2317  
11 East John St., Seattle, WA 98112, attn: Marc Zemel. This figure does not include the \$3,000  
12 payment under paragraph 7.f.viii of this Consent Decree.

13 10. A force majeure event is any event outside the reasonable control of the Port that  
14 causes a delay in performing tasks required by this Consent Decree that cannot be cured by due  
15 diligence. Delay in performance of a task required by this Consent Decree caused by a force  
16 majeure event is not a failure to comply with the terms of this Consent Decree, provided that the  
17 Port timely notifies Riverkeeper of the event, the steps that the Port will take to perform the task,  
18 the projected time that will be needed to complete the task, and the measures that have been taken  
19 or will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in  
20 completing the task.

21 11. The Port will notify Riverkeeper of the occurrence of a force majeure event as soon as  
22 reasonably possible but in any case, no later than fifteen (15) days after the Port becomes aware of  
23 the event. In such event, the time for performance of the task will be extended for a reasonable  
24 period of time following the force majeure event.

By way of example and not limitation, force majeure events include

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods;
- c. Actions or inactions of third parties over which the Port has no or limited control;
- d. Unusually adverse weather conditions;
- e. Restraint by court order or order of public authority;
- f. Strikes;
- g. Any permit or other approval sought by the Port from a government authority to implement any of the actions required by this Consent Decree where such approval is not granted or is delayed, and where the Port has timely and in good faith sought the permit or approval;
- h. Litigation, arbitration, or mediation that causes delay;
- i. Epidemics and pandemics, including but not limited to, COVID-19 related delays;
- j. Supply chain issues and delays.

12. This Court retains jurisdiction over this matter, while this Consent Decree remains in force. While this Consent Decree remains in force, this case may be reopened without filing fees so that the Parties may apply to the Court for any further order that may be necessary to enforce compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a dispute regarding implementation of, or compliance with, this Consent Decree, the Parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting will be held as soon as practical but must be held within thirty (30) days after notice of a

1 request for such a meeting to the other Party and its counsel of record. If no resolution is reached  
2 at that meeting or within thirty (30) days of the Notice, either Party may file a motion with this  
3 Court to resolve the dispute. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C.  
4 § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness  
5 fees) to any prevailing or substantially prevailing party, will apply to any additional court  
6 proceedings necessary to enforce the terms and conditions of this Consent Decree .

7 13. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment  
8 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-  
9 five (45) days following the receipt of a copy of the proposed consent judgment by the U.S.  
10 Attorney General and the Administrator of the U.S. Environmental Protection Agency (“EPA”).  
11 Therefore, upon the filing of this Consent Decree by the parties, Columbia Riverkeeper will serve  
12 copies of it upon the Administrator of the U.S. EPA and the U.S. Attorney General.

13 14. This Consent Decree will take effect upon entry by this Court. The Consent Decree  
14 terminates three years after that date.

15 15. Both Parties have participated in drafting this Consent Decree.

16 16. This Consent Decree constitutes the entire agreement between the Parties. There  
17 are no other or further agreements, either written or verbal. This Consent Decree may be modified  
18 only upon a writing signed by both Parties and the approval of the Court.

19 17. If for any reason the Court should decline to approve this Consent Decree in the  
20 form presented, this Consent Decree is voidable at the discretion of either Party. The Parties agree  
21 to continue negotiations in good faith to cure any objection raised by the Court to entry of this  
22 Consent Decree.

23 18. Notifications required by this Consent Decree must be in writing. The sending Party  
24 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified

1 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized  
2 overnight courier, with all fees prepaid; or (4) email. For a notice or other communication  
3 regarding this Consent Decree to be valid, it must be delivered to the receiving Party at the one or  
4 more addresses listed below or to any other address designated by the receiving Party in a notice  
5 in accordance with this paragraph.

6 **If to Columbia Riverkeeper:**

7 Simone Anter  
8 Columbia Riverkeeper  
9 PO Box 950  
Hood River, OR 97031  
Email: [simone@columbiariverkeeper.org](mailto:simone@columbiariverkeeper.org)

10 **And to:**

11 Marc Zemel  
12 Smith & Lowney PLLC  
2317 East John St.  
Seattle, WA 98112  
13 Email: [marc@smithandlowney.com](mailto:marc@smithandlowney.com)

14 **If to the Port of Longview:**

15 Lisa Hendriksen  
16 Port of Longview  
10 International Way  
Longview, WA 98632  
17 Email: [lhendriksen@portoflongview.com](mailto:lhendriksen@portoflongview.com)

18 **And to:**

19 Steven Hill  
20 Michael Fandel  
Miller Nash LLP  
2801 Alaskan Way  
21 Suite 300  
Seattle, WA 98121  
22 Email: [steve.hill@millernash.com](mailto:steve.hill@millernash.com)

23 Any party identified in the notice provisions above may affect a change in the notice address by  
24 providing a notice complying with these provisions to all other parties listed. A notice or other

1 communication regarding this Consent Decree will be effective when received unless the notice  
2 or other communication is received after 5:00 p.m. on a business day, or on a day that is not a  
3 business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A  
4 notice or other communication will be deemed to have been received: (a) if it is delivered in person  
5 or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt  
6 as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise  
7 refuses to accept it, or if it cannot be delivered because of a change in address for which no notice  
8 was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided by e-  
9 mail, upon receipt of a response by the party providing notice or other communication regarding  
10 this Consent Decree.

11 Dated this 22nd day of November, 2022.

12 

13 Lauren King  
14 United States District Judge  
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